

The Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

TREVOR KEVIN BAYLIS,
Plaintiff, (*pro se*).
v.
VALVE CORPORATION,
Defendant.

Case No. 2:23-cv-01653-RSM

**PLAINTIFF'S OPPOSITION
TO DEFENDANT'S MOTION
TO DISMISS**

Date filed 5th March 2024

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1 **1. INTRODUCTION**

2 Plaintiff’s “Baylis” Second Amended Complaint Dkt. #25 alleges with sufficient
 3 specificity how Defendants, “Valve” directly and vicarious infringe on Baylis’ copyrighted
 4 works as well as claimed sufficiently how Valve has “materially misrepresented” themselves
 5 and also sufficiently claimed Valve’s “willful blindness” as a cause of action itself.

6 Valve are seeking to profit from Baylis’ infringed work in this case whilst claiming
 7 DMCA Safe-harbour immunity. Valve are willfully blind to the fact they don’t even qualify for
 8 DMCA Safe-harbour immunity in this case, and are ignoring numerous laws, facts and red flags
 9 on purpose. Valve’s objective is simple: to avoid liability for their infringement and profiteering
 10 of Baylis’ copyrighted works as well as avoid liability for abusing the DMCA Safe harbour
 11 provisions whilst acquiring valuable Iron Sky film copyrights by a kind of expropriation.

12 In their Motion to Dismiss Dkt. #29 Valve’s objections to Baylis’ claims “Count 3”
 13 and ”Count 4” Dkt. #25 are unavailing. Valve’s opposition to Baylis’ Digital Millennium
 14 Copyright Act (DMCA) Count 3 claim is without merit because Valve more or less prove
 15 Baylis’ point when Valve deliberately “misrepresents” the plain language of the statute
 16 17 U.S.C. § 512(f) as if only ISPs such as Valve can claim “damages, including costs and
 17 attorneys’ fees”. This is false because Valve ignores the fact that the “copyright holder” is
 18 also mentioned in the plain language of the statute 17 U.S.C. § 512(f). Valve are pretending
 19 that they are eligible for DMCA Safe harbour provisions in this case when in fact they are
 20 have non-qualifying status in this case under 17 U.S.C. §§ 512(c)(1)(B) because they obtain
 21 financial benefits from the infringing activities and can control such things.

22 Valve’s argument that Baylis’ Count 4 claim is a, “claim that does not exist,” is also
 23 unavailing because “willful blindness claims” have been used before in civil cases involving
 24 intellectual property which have survived a motion to dismiss. Baylis’ allegations provide

1 sufficient notice of the basis on which Valve is sued, and is all that Rule 8(a) requires.

2 Baylis' Second Amended Complaint Dkt. #25 sets forth facts sufficient to satisfy
 3 *Twombly*. Finally, Valve's attempt to dismiss Baylis' allegations should be denied as merit-
 4 less. If the Court finds that any of Baylis' claims are insufficient, amendment would not be
 5 futile, and leave to amend should be granted.

6 **2. FACTUAL BACKGROUND**

7 Plaintiff "Baylis" is a joint author and lawful copyright owner of the amateur film
 8 production Iron Sky which was first published in Germany 2012. (¶ 3-4, 33-35, 89-91.)¹
 9 Baylis was receiving just unemployment benefits for a large part of the of the production (¶
 10 82-83,) and maintains copyright ownership to his work. (¶ 41-42, 85.) After Iron Sky was
 11 released in 2012 the Iron Sky production company formed a new company "Troll VFX".
 12 Additionally, Baylis found out that his Iron Sky work had been sent to a games company
 13 "Topware Interactive" without his permission for use in a video game called Iron Sky
 14 Invasion. Dkt. #25 at Pages. 11-33. Baylis had previously attempted to resolve the issue with
 15 Iron Sky Producers under the premise of a "salary review" but was sacked instead, and this
 16 lead to Baylis v Troll VFX in Finland. (¶ 102.) Whereby, Baylis proved his authorship of Iron
 17 Sky and competence as an animator to Judge Oskar Kulmala. (¶ 129.)

18 Valve control an Online platform called Steam and have been selling the game Iron
 19 Sky Invasion developed by Topware Interactive, who are a Valve subscriber "Partner", and this
 20 is infringement of Baylis' exclusive rights under USC 17 §106. Dkt. #25 at Pages11-33. Baylis
 21 asked Valve to cease sale his copyrighted works due to the fact no permission has ever been
 22 granted by for any adaptations of his work. (¶ 99-107.) Valve have declined to cease sale and

23
 24 ¹ "¶ " citations are to the Complaint, (Dkt. #25) unless otherwise indicated.

1 distribution of his copyrighted works (¶ 105.) Therefore, leaving no choice but for Baylis to
 2 take legal action. On February 6, Baylis filed his 48-page Second Amended Complaint. Dkt.
 3 #25. On February 20, Valve moved to dismiss Baylis' Third Cause of Action and Fourth Cause
 4 of Action (Count 3 and Count 4) pursuant to Fed. R. Civ. P. 12(b)(6).

5 **3. LEGAL STANDARD**

6 Rule 8(a) requires only a “short and plain statement” of facts supporting a claim.
 7 Fed. R. Civ. P. 8(a). Thus, “a complaint attacked by a Rule 12(b)(6) motion to dismiss does
 8 not need detailed factual allegations[.]” Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555
 9 (2007). The court must assume the truth of the complaint’s factual allegations and credit
 10 all reasonable inferences arising from those allegations. Sanders v. Brown, 504 F.3d 903,
 11 910 (9th Cir. 2007). Additionally, “A claim crosses from conceivable to plausible when it
 12 contains factual allegations that, if proved, would “allow[] the court to draw the reasonable
 13 inference that the defendant is liable for the misconduct alleged.”” Banneker Ventures, LLC v.
 14 Graham, 798 F.3d 1119, 1129 (D.C. Cir. 2015). Furthermore, “A complaint survives a motion
 15 to dismiss even “[i]f there are two alternative explanations, one advanced by [the] defendant
 16 and the other advanced by [the] plaintiff, both of which are plausible.” Starr v. Baca, 652
 17 F.3d 1202, 1216 (9th Cir. 2011).” Banneker Ventures, LLC v. Graham, 798 F.3d 1119, 1129
 18 (D.C. Cir. 2015). A legal theory is “cognizable” if it is “[c]apable of being judicially tried or
 19 examined before a” court. Cognizable, Black’s Law Dictionary (11th ed. 2019).

20 **4. ARGUMENT**

21 **A. Baylis has pled facts sufficient to state a cause of action for**
 22 **“Material Misrepresentation” under 17 U.S.C. § 512(f) (Count 3).**

23 Valve claim that 17 U.S.C. § 512(f) relates to safe harbor provisions for Online service
 24 providers (OSP/ISP) *only*, and is not a cause of action available to copyright holders who

1 assert infringement. However, Valve are just wrong because Valve ignores the fact that the
 2 “copyright holder” is also mentioned in the plain language of the statute 17 U.S.C. § 512(f)
 3 as also being able to claim “damages, including costs and attorneys’ fees” from any party
 4 who materially misrepresents under 17 U.S.C. § 512(f) (Valve in this case). This just proves
 5 Baylis’ point about Valve making misrepresentations to him because they’ve done it again in
 6 their Motion To Dismiss Dkt. #29.

7 The DMCA provides that to be eligible for safe harbor protection, a service provider
 8 must not “receive a financial benefit directly attributable to the infringing activity, in a case
 9 in which the service provider has the right and ability to control such activity.” 17 U.S. Code
 10 §§ 512 (c) (1) (b). In this case Valve are the type of service provider “ISP” that is not eligible
 11 for DMCA safe harbour provisions because they can benefit financially from the infringing
 12 activities in this case due to the fact they are selling and distributing Baylis’ copyrighted
 13 work without a license from him, and have right and ability to control such activity, including
 14 through a review process which all Partners games must be subjected to once they have
 15 subscribed to Valve’s platform. (¶ 32.) Valve are abusing the DMCA safe harbour provisions,
 16 and so to use Valve’s own reference from Online Pol’y Grp. v. Diebold, Inc., 337 F. Supp.
 17 2d 1195 (N.D. Cal. 2004) “[i]n section 512(f), Congress provides an express remedy for
 18 misuse of the DMCA’s safe harbor provisions,” [Emphasis added]

19 **1. Baylis has adequately claimed he is a joint author of Iron Sky and**
 20 **owns a copyright under U.S.C 17 §106.**

21 Baylis has adequately claimed he is a copyright owner to his work related to Iron Sky
 22 due to him being an actual joint author and his name being on the work. (¶¶ 82-92.) Whilst
 23 there is no need to register a foreign work at the United States Copyright Office, Baylis has
 24 done so. (¶ 4.) This also confirms his authorship status due to the fact no “work for hire”

1 contracts exist that would automatically convey copyrights to anyone else. (JJ 82-85.)

2 U.S.C 17 §101 defines motion pictures as, “audiovisual works consisting of a series
 3 of related images which, when shown in succession, impart an impression of motion...”
 4 An animator such as Baylis on a film like Iron Sky where the visual aspects of the film are
 5 important, requires him to do just that. In Aalmuhammed v. Lee, 202 F.3d 1227, 1232 (9th
 6 Cir. 2000) Judges accepted the plausibility of an animator as a joint author of a film, “Where
 7 the visual aspect of the movie is especially important, the chief cinematographer might be
 8 regarded as the author. And for, say, a Disney animated movie like “The Jungle Book,” it
 9 might perhaps be the animators...” Aalmuhammed v. Lee, 202 F.3d 1227, 1232 (9th Cir. 2000).

10 **2. Baylis has adequately claimed that Valve have made
 11 misrepresentations under 17 U.S.C. § 512(f).**

12 17 U.S.C. § 512(f) relates to Misrepresentation made by “Any person” and related
 13 remedies. Valve claiming that misrepresentation under 17 U.S.C. §512(f) is, “not a cause of
 14 action available to alleged copyright holders who assert infringement,” (MTD at 3.)² However,
 15 Valve are just wrong because the plain text of 17 U.S.C. § 512(f) makes it objectively clear
 16 that it *is* a cause of action available to copyright holders. The statute provides:

17 ((f) Misrepresentations.—**Any person** who knowingly materially misrepresents under
 18 this section—
 19 (1) that material or activity is infringing, or
 20 (2) that material or activity was removed or disabled by mistake or misidentification,
 21 **shall be liable for any damages, including costs and attorneys' fees**, incurred by
 22 the alleged infringer, **by any copyright owner** or copyright owner's authorized
 23 licensee, or by a service provider, **who is injured by such misrepresentation**, as the
 24 result of **the service provider relying upon such misrepresentation** in removing
 25 or disabling access to the material or activity claimed to be infringing, **or in replacing**
 26 **the removed material or ceasing to disable access to it.**

27 17 U.S.C. § 512(f) [Emphasis Added].

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1 Baylis has stated facts in his claim which enable him to state a claim under 17 U.S.C.
 2 § 512(f) because it is genuinely Valve who are a party who, by making misrepresentations
 3 themselves under 17 U.S.C. § 512(f) *are relying upon their own misrepresentations*, “in
 4 replacing the removed material or ceasing to disable access to it” (17 U.S.C. § 512(f) (2)).

5 In this case Valve *is* the alleged infringer *and* Valve are the ones making
 6 misrepresentations because they are ineligible for DMCA Safe harbour provisions in this case
 7 due to their ineligible status under 17 U.S. Code §§ 512 (c) (1) (b) and this is made clear in,

8 **United States Copyright Office: section 512 of title 17: a report of the
 register of copyrights**

9 “to qualify for the section 512(c) and (d) safe harbors, an OSP must not “receive a
 10 financial benefit directly attributable to the infringing activity, in a case in which the
 OSP has the right and ability to control such activity.”” (p.26)

<https://www.copyright.gov/policy/section512/section-512-full-report.pdf>

11 Valve even admit that the statutory language is sufficiently clear on its face in U.S.C.
 12 § 512(f) because they make reference to it in their own Motion To Dismiss Dkt. #29 by
 13 citation. “The court further noted that “the statutory language [of § 512(f)] is sufficiently clear
 14 on its face and does not require importation of standards from other legal contexts.”” Online
 15 Pol’y Grp. v. Diebold, Inc., 337 F. Supp. 2d 1195 (N.D. Cal. 2004) at 1204. (MTD at 4.)

16 Valve, continue to avail themselves of financial gain from the sale and distribution of
 17 the infringing content as they have not removed the infringing content at this time of writing,
 18 and they are misrepresenting to Baylis, “that they have fulfilled their role in this case under
 19 DMCA Safe harbour provisions.” (JJ 105-107.) This is not true it’s a misrepresentation by
 20 Valve and is objectively a misuse of the DMCA Safe harbour provision by Valve which,
 21 Congress provides an express remedy for under 17 U.S.C. § 512(f).

22 Furthermore, Valve appears to be wanting to claim protection from Baylis under 17
 23 U.S.C. § 512(f) by saying, “he is the very type of party that 17 U.S.C. § 512(f) protects online
 24 service providers against.” (MTD at 1.) This is just victim blaming by Valve because Baylis

1 is the actual victim of Valve's misrepresentation, and of the harm caused by Valve due to their
 2 misrepresentation, willful blindness and infringement of his lawfully acquired copyright.
 3 Valve is purposefully misusing the DMCA Safe harbour provision to claim protection against
 4 liability for Valve's own infringing activities, which they receive a financial benefit directly
 5 attributable to, and Valve is deceptively utilizing an irrelevant counter-notice from their
 6 Partner (¶ 120,) to invoke DMCA Safe harbour provisions despite Valve's non-qualifying
 7 status under 17 U.S.C. §§ 512(c)(1)(B) in this case. Therefore, Baylis is the copyright owner
 8 and can claim damages, including costs and attorneys' fees incurred under U.S.C. 17 §512(f)
 9 for Valves misrepresentations and Valve's abuse of the DMCA under 17 U.S.C. § 512(f).

10 **3. Baylis has not made misrepresentations about his
 11 lawfully acquired copyrights to Iron Sky.**

12 Valve are making a claim that Baylis is somehow misrepresenting that he holds a valid
 13 copyright for his own work for which he is the author of (MTD at 4.) This is false because
 14 Baylis is definitely the author of his work on Iron Sky and has the original files with his
 15 name embedded within the metadata of many of the files (¶ 86-92.) Baylis is a forty year
 16 veteran professional of the creative industry and has been working at high level creative firms
 17 since 1983 before computers were common place in the industry, and has been the author
 18 of innumerable copyrightable works over that time (¶ 33-35.) Baylis has already shown
 19 considerable evidence of authorship and proximity to his Iron Sky work substantially and
 20 variously throughout his Second Amended Complaint Dkt. #25, Pages 9-11, 13-38.

21 Iron Sky producers have never acquired any adaptations rights from Baylis and no
 22 valid written agreement exists with the word "adaptation rights" in it, let alone the words
 23 "Iron sky Invasion" or "video games" or even the word "Valve" (¶ 33-35, 44, 58.) Iron Sky
 24 Producers have relied on a fallacy of popular opinion to get away with raising funding for

1 a franchise including video games based on Iron Sky copyrights as equity rather than any
 2 valid Chain of title documentation. The Producers have never fully “owned” copyrights from
 3 Iron Sky. This has been demonstrated on its own by Baylis’ documentation at the time under
 4 which *he created significant parts of the production whilst being unemployed (¶ 82-85.)* and
 5 during litigation in Finland which ultimately resulted in the Iron Sky Producers bankruptcy
 6 when their distribution deals for a franchise were canceled (¶ 130.) Valve have no proof of
 7 copyright acquisition from Baylis via Chain of Title documentation and no proof of any
 8 written and signed exclusive rights agreement from Baylis’ to Valve.

9 **B. Baylis has pled facts sufficient to state a cause of action for**
 10 **“Willful Blindness” under U.S.C. 17 §512 and U.S.C. 17 §106 (Count 4).**

11 Valve’s argument in referring to his count 4 claim (Dkt. #25) is that Baylis “makes up
 12 a claim that does not exist.” (MTD at 1.) However, Valve then contradict their own claim by
 13 admitting that willful blindness is a claim related to Digital Millennium Copyright Act under
 14 U.S.C 17 § 512(f) in citing, Lenz v. Universal Music Corp., 815 F.3d 1145, 1155 (9th Cir. 2016)
 15 which, also deals with misrepresentations under U.S.C 17 § 512(f). Therefore, Valve are again
 16 proving Baylis’ point for him because they admit that willful blindness is a valid claim. There is a
 17 long history of willful blindness being accepted as a claim by the Federal judiciary as indicated in
 18 the foregoing.

19 **1. Allegations of Willful Blindness have been sufficient to defeat a**
 20 **motion to dismiss in civil cases involving intellectual property rights.**

21 In, Motiva Patents, LLC v. Sony Corp., 408 F. Supp. 3d 819, 829 (E.D. Tex.
 22 2019) (“The Supreme Court explained that “[t]he traditional rationale” for treating willful
 23 blindness as a form of knowledge “is that defendants who behave in this manner are just as
 24 culpable as those who have actual knowledge.” Global-Tech , 563 U.S. at 766, 131 S.Ct.

1 2060. Additionally, the doctrine of willful blindness recognizes that “persons who know
 2 enough to blind themselves to direct proof of critical facts in effect have actual knowledge of
 3 those facts.” Id. After reviewing “the long history of willful blindness and its wide acceptance
 4 in the Federal Judiciary,” the Court explained that willful blindness, in the context of induced
 5 infringement, has two elements: “(1) the defendant must subjectively believe that there is
 6 a high probability that a fact exists and (2) the defendant must take deliberate actions to
 7 avoid learning of that fact.” Id. at 768, 131 S.Ct. 2060. Accordingly, conduct that qualifies as
 8 willfully blind to the existence and potential infringement of the asserted patents is sufficient
 9 to satisfy the knowledge requirement for induced infringement. See *id.*” (Note: Full citation
 10 is from Motiva Patents, LLC v. Sony Corp., 408 F. Supp. 3d 819, 829 (E.D. Tex.))

11 In this particular case, rather than just being an element of a claim willful blindness it
 12 is in fact the catalyst for the main claim because Valve are by design attempting to expropriate
 13 valuable copyright from Baylis by being willful blind to the fact he is the author of the works
 14 and has valid lawfully acquired copyrights to the work under U.S.C. 17 §106.

15 **2. The claim of willful blindness has a cognizable legal theory.**

16 “Willful blindness” relates to this case as part of a nefarious strategy which creates
 17 an “*argument from ignorance*” (such as assuming a film producer automatically “owns
 18 copyrights” to a film when evidence of their “copyright ownership” is actually lacking) with
 19 the intent to illegally expropriate copyrights (17 U.S. Code § 201(e))³ from the film’s authors
 20 instead of legal acquisition via written, signed contractual conveyance as required under
 21 U.S.C 17 §204, and then to use the expropriated copyright from authors to fraudulently obtain
 22 financial benefits in various ways relying on that *argument from ignorance* to ultimately

23
 24 ³ (see, Dkt. #25. 4. QUESTIONS PRESENTED (§ 14.) Expropriation of copyright))

1 defraud investors and other third parties who are credulous enough to believe such things.

2 Baylis is aware of this because it is the exact same way that Iron Sky producers were
 3 able to utilise Baylis' copyrighted works previously for a franchise because, as there were no
 4 adaptation rights agreements offered to the Producers, they instead attempted to expropriate
 5 such rights from Baylis. (¶ 82-85.) Such nefarious willful blindness by Iron Sky producers
 6 in the past was also part catalyst for Baylis v Troll VFX in Finland whereby, instead of
 7 negotiating with Baylis for a license, the producers attempted to expropriate rights from
 8 Baylis by falsely claiming that Baylis had not even worked on Iron Sky (*yes, they really did
 9 that!*) even though his name is top of the credits or VFX artists and in computer file metadata
 10 ((¶ 34, 89-91) and at Page 18 Dkt. #25). Baylis was then sacked from Troll VFX which
 11 resulted in court case Baylis v. Troll VFX, Case L 15/32468 (21st October 2016. Tampere
 12 Finland) (¶ 129.) This then led to Baylis having to prove himself, and the authorship of his
 13 work to Judge Oskar Kulmala for a number of hours and subsequent confirmation that Baylis
 14 is the author of his Iron Sky work. (¶ 88, 129.)

15 Valve have been made aware of these things through email exchanges with Baylis. (¶
 16 99 - 105.) Valve has not removed the infringing content in this case at time of writing, and can
 17 continue to obtain a financial benefit from it. Valve are deliberately ignoring salient facts and
 18 "red flags" (¶ 124 - 135.) which would otherwise indicate to any reasonable person that there
 19 are problems with the Iron Sky Chain of Title, and therefore Valve continues to benefit from
 20 the infringement of Baylis' works at the expense of Baylis causing harm (¶ 124 - 135.)

21 Therefore, willful blindness by Valve is not just an element of infringement, it is a
 22 deliberate intentional strategy by Valve and the main cause for Baylis to take action in this
 23 court from which relief may be sought, and there exists a reasonable expectation that discovery
 24 will reveal evidence in support of Baylis' claims because the Chain of Title for Iron Sky will

1 show that no adaptation rights have been granted to anyone by Baylis for his work (¶ 82-85).

2 Baylis' allegations plausibly suggest that additional discovery will reveal evidence
 3 in support of Baylis' claim countering any *arguments from ignorance* and this is confirmed
 4 in, Motiva Patents, LLC v. Sony Corp., 408 F. Supp. 3d 819, 827 (E.D. Tex. 2019) ("the
 5 plausibility standard is met when the complaint pleads "enough fact to raise a reasonable
 6 expectation that discovery will reveal evidence" in support of the alleged claims. Twombly
 7 , 550 U.S. at 556, 127 S.Ct. 1955 ; accord id. at 559, 127 S.Ct. 1955 (explaining that claims
 8 should only be dismissed at the pleading stage when there is "no 'reasonably founded hope
 9 that the [discovery] process will reveal relevant evidence'" (quoting Dura Pharm., Inc. v.
 10 Broudo , 544 U.S. 336, 347, 125 S.Ct. 1627, 161 L.Ed.2d 577 (2005))); In re Bill of Lading
 11 Transmission & Processing Sys. Patent Litig. , 681 F.3d 1323, 1341 (Fed. Cir. 2012) ("As
 12 the Supreme Court has explained, the plausibility requirement is not akin to a 'probability
 13 requirement at the pleading stage; it simply calls for enough fact[s] to raise a reasonable
 14 expectation that discovery will reveal' that the defendant is liable for the misconduct alleged."
 15 (quoting Twombly , 550 U.S. at 556, 127 S.Ct. 1955))".)

16 **3. The claims of relief are appropriately sought, and sufficiently pled**

17 Valve must subjectively believe that there is a high probability that Baylis is author
 18 to his work on Iron Sky because Valve is the type of company that hires animators like
 19 Baylis to create 3D animations for their own games. That is to say, Valve's own artists create
 20 intellectual property for Valve to exploit, register at the Copyright Office, and protect from
 21 infringement such as in, Valve Corp. v. Sierra Entertainment Inc., 431 F. Supp. 2d 1091, 1094
 22 (W.D. Wash. 2004), "Valve alleges that Sierra/Vivendi distributed Valve games to cyber-cafés
 23 in the United States and abroad. First Am. Compl., docket no. 40, pg. 3, ¶ 11. Cyber-cafés are
 24 "for-profit multi-player facilities" that provide the general public with access to computers

1 and video games for a fee. Id.” Valve Corp. v. Sierra Entertainment Inc., 431 F. Supp. 2d
2 1091, 1094 (W.D. Wash. 2004). Therefore, Valve must understand that appropriate licenses
3 must be granted for the legal exploitation of copyrighted works such as Iron Sky works, and
4 that a clear Chain of Title is required for legal funding and distribution of works such as Iron
5 Sky Invasion because Iron Sky Invasion contains in principle similar types of 3D models and
6 animations that Valve’s own employees create for Valve’s own games which are copyrightable
7 but Valve are failing to do due diligence checks on the Iron Sky Chain of Title and ignoring red-
8 flag awareness of various facts that indicate infringement of Baylis’ copyrights. (¶¶ 124-135.)

9 **C. Baylis should be granted leave to amend if required.**

10 Courts in this district freely grant leave to amend where the claim could be cured by
11 additional allegations. Doe v. United States, 58 F.3d 494, 497 (9th Cir. 1995). This policy is
12 “applied with extreme liberality.” Morongo Band of Mission Indians v. Rose, 893 F.2d 1074,
13 1079 (9th Cir. 1990); see also Lopez v. Smith, 203 F.3d 1122, 1127 (9th Cir. 2000). But courts
14 “should be especially reluctant to dismiss on the basis of the pleadings when the asserted
15 theory of liability is novel . . . since it is important that new legal theories be explored and
16 assayed in the light of actual facts.” Elec. Constr. & Maint. Co. v. Maeda Pac. Corp.,
17 764 F.2d 619, 623 (9th Cir. 1985).

18 **5. CONCLUSION**

19 Valve is continuing to profit from Baylis’ infringed work whilst knowingly
20 misrepresenting that they have DMCA safe harbour immunity when they do not in this case,
21 and are being willful blind in order to, in principle, expropriate copyrighted works from Baylis
22 for their own gain. Valve’s motion to dismiss should be denied. Should the Court determine
23 that dismissal of any claims should be granted, the Court should do so without prejudice and
24 with leave to amend.

I certify that this memorandum contains
4047 words, in compliance with the Local
Civil Rules.

5th March 2024

Trevor Kevin Baylis

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Tampere 33560, FINLAND

Please note: Plaintiff is dyslexic. Thus written documents such as this may have minor accidental spelling and or grammatical errors. Such things should not be seen as cause to prejudice the author of this document.

CERTIFICATE OF SERVICE

I hereby certify that on 5th March 2024 I caused true and correct copies of the foregoing document to be served upon the following, at the email addresses stated below, via “email” as method of service.

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Dated: 5th March 2024

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